**IN THE** HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL WRIT PETITION NO.2482 OF 2004

Rajesh Vashdev Adnani,
25 years, an Indian Inhabitant,
residing at 14, Satkartar
Society, 3rd Floor,
S.V. Road, Khar (W),
Mumbai-52. .... Petitioner

- Versus -

1. The State of Maharashtra,
through the Secretary to
the Govt. of Maharashtra,
Home Department, Mantralaya,
Mumbai-400 032.

2. Neela Satyanarayana,
the Principal Secretary
to the Government of
Maharashtra, Home Department
(Appeals and Security),
and Detaining Authority,
Mantralaya, Mumbai-400 032.

3. The Superintendent of Prison,
the Mumbai Central Prison,
Arthur Road, Mumbai.

4. The Superintendent of Prison,
Nasik Road Central Prison,
Nasik. .... Respondents

Sarvasri Mukul Rohatagi with Harishankar,
Maqsood Khan and Yogesh Rohira for the
Petitioner.

Shri D.S. Mhaispurkar, Addl. Public Prosecutor,
for the Respondents.

**CORAM:** R.M.S. KHANDEPARKAR &
P.V. KAKADE, JJ.

**DATED:** MARCH 18, 2005

**ORAL JUDGMENT (Per R.M.S.Khandeparkar, J.):**

1. Heard. Perused the records. The petitioner challenges the order of detention dated 3-11-2004 issued by the respondent No.2 against Vashdev Gobindram Adnani, the father of the petitioner herein, under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, hereinafter called as "the COFEPOSA".

2. The facts relevant to be noted are that on 20-8-2004, on the basis of the intelligence report, the detenu on being intercepted by the officers of the DRI after he had passed through the customs area to board the flight to Singapore, foreign currency of USD 81000.00, Euro 7600.00 was seized from the detenu along with 366.00 Singapore Dollars, totally equivalent to Indian currency of Rs.40,08,244.50 ps. The same was seized under panchnama under the provisions of the Customs Act, 1962 and in the statement recorded under Section 108 of the Customs Act, the detenu claimed that the seized currency was brought by him from Singapore after necessary declaration and the same was being carried back to Singapore. The impugned order of detention came to be passed on 3-11-2004 and it was actually executed by arrest and detention of the detenu on 2-12-2004.

3. It is the case of the petitioner that the impugned

order of detention has been based on two heads of detention as available under Section 3(1)(i) and (iii) of the COFEPOSA. While Clause (i) relates to preventing the detenu from smuggling goods in future, the Clause (iii) relates to preventing the detenu from engaging in transporting or concealing or keeping smuggled goods in future. It is the case of the petitioner that the records before the detaining authority nowhere disclosed any material which could reveal that the detenu was engaged in transporting or concealing or keeping smuggled goods and therefore there was no occasion for the detaining authority to get herself subjectively satisfied about the need for issuance of the detention order in terms of Section 3(1)(iii) of COFEPOSA. Since the impugned order is a composite order passed under Section 3(1)(i) and (iii) and as the materials on record did not disclose any justification for being subjectively satisfied about the need for issuance of the order in terms of Section 3(1)(iii), the entire order discloses non-application of mind by the detaining authority and therefore the entire order is liable to be quashed as bad in law. On the other hand, it is the case of the respondents that the statement of Navin Tanna reveal that the detenu had contacted him and had acquired the smuggled currency and the same currency was kept by the detenu with his servant and further carried with him while trying to go abroad and therefore the

same discloses the activities of the detenu which reveal that he was engaged in the activity of transporting and concealing and keeping foreign currency which in turn discloses smuggling within the meaning of the said expression under the COFEPOSA and therefore no fault can be found with the impugned order of detention, besides, merely because the order is bad on one head, it would not render the order on another head to be bad in law.

4. While assailing the impugned order of detention, the learned Advocate for the petitioner submitted that the impugned order of detention has been based on two heads, one being for preventing the detenu from smuggling goods in future and another being to prevent him from engaging in transporting or concealing or keeping smuggled goods and since the grounds of detention apparently reveal total non-application of mind in relation to requirement for issuance of the order of detention against the detenu to prevent him from engaging in transporting or concealing or keeping smuggled goods in the absence of any material being placed on record before the detaining authority disclosing the involvement of the detenu in such activities, the entire order of detention is liable to be declared as bad in law. He has further submitted that the provision of Section 5A of the COFEPOSA cannot be attracted in case of defective head being applied for issuance of the order of detention though the said

provision of law may apply in case of defective grounds in support of the detention order. It is his further contention that undoubtedly under Section 3 of the COFEPOSA a detention order can be issued under the different heads enumerated thereunder but when the order is issued under more than one head, the grounds in support of such order should disclose the materials in support of each of the heads on which such order is issued and in case of absence of such materials and grounds in support of any one head on which such composite order is issued, would render the entire order to be bad in law. Referring to the grounds in support of the detention order, the learned Advocate for the petitioner has submitted that the same apparently disclose that the materials which were placed before the detaining authority did not include any material which could reveal that the detenu was ever engaged in the activity of transporting or concealing or keeping smuggled goods as such. In the absence of iota of evidence regarding the involvement of the detenu in transporting or concealing or keeping of smuggled goods, there was no occasion for the detaining authority to arrive at the subjective satisfaction about the need for issuance of the detention order against the detenu in terms of the provision comprised under Section 3(1)(iii) of the COFEPOSA and as the impugned order having been issued under the said head along with another head,

namely, under Section 3(1)(i) of the COFEPOSA, the entire order is vitiated and therefore the detenu is liable to be released forthwith. Drawing attention to the statement of Navin Tanna, it was sought to be contended that it nowhere discloses that the foreign currency which is stated to have been obtained by the detenu from him could be said to be smuggled goods. It is his further contention that the foreign currency which has been seized from the detenu nowhere discloses that the same could be said to be smuggled goods within the meaning of the said expression under the COFEPOSA so as to enable the application of the provision of Section 3(1)(iii) of the COFEPOSA and therefore it being a settled law that if one head of detention falls to the ground, the entire order also would fall to the ground and applying the same to the order in question, same is liable to be quashed. Various decisions are sought to be relied upon in support of the contention to which reference will be made in the course of the judgment.

5. Refuting the contention on behalf of the petitioner, it is sought to be argued by the learned A.P.P. that undisputedly the detention order has been issued under two heads, one to prevent the detenu from smuggling goods in future and another to prevent him from engaging in transporting or concealing or keeping smuggled goods in future and therefore it cannot be disputed that the

order would fall under Section 3(1)(i) as well as under Section 3(1)(iii) of COFEPOSA. However, according to the learned A.P.P. the grounds in support of the detention order themselves reveal that the detenu was engaged in transporting and keeping smuggled goods and further the very fact that the detenu while travelling to Singapore via an Air India flight was found carrying US Dollars and Euro currency concealed in his handbag without declaring to the customs authorities as is otherwise required to be declared under the law, not only discloses attempt on the part of the detenu to smuggle foreign currency out of India but also discloses the activity to smuggle goods within the meaning of the said expression under the provisions of COFEPOSA read with the provisions of the Customs Act, 1962. It his contention that the materials which were placed before the detaining authority reveal that the foreign currency which was handed over to the detenu by Navin Tanna was undisputedly the currency which was purchased by the detenu from Navin Tanna and that the detenu for the purpose of business of tours and travel used to frequently travel to Hong Kong, Singapore, Philippines etc., and the investigation has revealed that the detenu had been engaging in such activities without necessary declaration regarding the possession of such foreign currency with him to the Government authorities as well as without declaration in that regard in the income-tax

returns. Besides, his engagement in such activities is also revealed from his admission that he used to keep the foreign currency with his girlfriend by name Sharda. In any case, according to the learned A.P.P., the challenge being restricted to only one head of detention, even assuming that there are no sufficient materials to justify the detention under the said head, the entire order cannot be said to be bad in law as the order of detention based on each ground is an independent order and the same principle would apply to the order under different heads and therefore, according to the learned A.P.P., there is no case for interference in the impugned order of detention. Reliance is also placed in some of the decisions to which reference will be made in the course of the judgment.

6. Undoubtedly, the challenge to the order of detention is on the sole ground that if out of two heads of detention one head of detention falls to the ground, the entire order falls to the ground. It is also not in dispute that the order of detention has been issued on two heads, namely, to prevent the detenu from smuggling goods in future by applying the provision of law under Section 3(1)(i) of the COFEPOSA and secondly, to prevent the detenu from engaging in transporting or concealing or keeping smuggled goods, which is under Section 3(1)(iii) of the COFEPOSA. The challenge is restricted

to the head under Section 3(1)(iii) of the COFEPOSA which relates to preventing the detenu from engaging in transporting or concealing or keeping smuggled goods and the challenge is on the ground that there were no material before the detaining authority to justify the subjective satisfaction for issuance of the detention order on the said head. In the circumstances, the point for consideration which would arise is that in a case where the order of detention is issued on two heads of detention and if one head of detention falls to the ground, whether the entire order would fall to ground, as sought to be contended on behalf of the petitioner.

7. Section 3(1) of the COFEPOSA provides that the Central Government or the State Government or any officer of the Central Government, specially empowered for the purposes of the said section by that Government, or any officer of the State Government, not below the rank of a Secretary to that Government, specially empowered for the purposes of the said section by that Government, may, if satisfied, with respect to any person, including a foreigner, that, with a view to preventing him from acting in any manner prejudicial to the conservation or augmentation of foreign exchange or with a view to preventing him from (i) smuggling goods, or (ii) abetting the smuggling of goods, or (iii) engaging in transporting or concealing or keeping

smuggled goods, or (iv) dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods, or (v) harbouring persons engaged in smuggling goods or in abetting the smuggling of goods, it is necessary so to do, make an order directing that such person be detained. The proviso thereto provides that no order of detention shall be made on any of the grounds specified in the said sub-section on which an order of detention may be made under Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 or under Section 3 of the Jammu and Kashmir Prevention of Illicit in Narcotic Drugs and Psychotropic Substances Ordinance, 1988 (J & K Ordinance 1 of 1988). The sub-section (2) of Section 3 provides that when any order of detention is made by a State Government or by an officer empowered by a State Government, the State Government shall, within ten days, forward to the Central Government a report in respect of the order. The sub-section (3) of Section 3 provides that for the purpose of Clause (5) of Article 22 of the Constitution, the communication to a person detained in pursuance of a detention order of the grounds on which the order has been made shall be made as soon as may be after the detention, but ordinarily not later than five days, and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days, from

the date of detention.

8. As far as the expressions "detention order" and "smuggling" in the COFEPOSA are concerned, they are defined under Section 2(b) and 2(e) respectively. Accordingly, "detention order" means an order made under Section 3 of the COFEPOSA and the expression "smuggling" has been given the meaning as is found in Clause (39) of Section 2 of the Customs Act, 1962. Accordingly, it means any act or omission which will render such goods liable to confiscation under Section 111 or Section 113.

9. Section 5A of the COFEPOSA provides that where a person has been detained in pursuance of an order of detention under sub-section (1) of Section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly (a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are vague, non-existent, not relevant, not connected or not proximately connected with such person, or invalid for any other reason whatsoever, and it is not, therefore, possible to hold that the Government or officer making such order would have been satisfied as provided in sub-section (1) of Section 3 with reference to the remaining ground or grounds and made the order of

detention, and (b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said sub-section (1) after being satisfied as provided in that sub-section with reference to the remaining ground or grounds.

10. Bare perusal of Section 3 of the COFEPOSA would, therefore, disclose that the detaining authority is empowered to issue an order of detention either on any one or more of the heads mentioned in the said section. Undoubtedly, once such an order is issued on more than one head, the grounds in support of such detention order will have to disclose the necessary materials to sustain the order on each of the heads on which such an order is issued. Certainly in case the grounds fail to disclose support to any one or more of such heads, the order in relation to those heads to which the grounds do not support, would not be sustainable. The point, however, which is canvassed is that on account of lack of support to one of the heads the same would affect and invalidate the entire order of detention. The contention in this regard is two-fold. Firstly, that the provisions of Section 5A of the COFEPOSA are not attracted in such cases, and secondly, such an order would disclose non-application of mind by the detaining authority while arriving at the subjective satisfaction regarding the need for issuance of the detention order on the relevant

heads.

11. As regards the non-applicability of Section 5A of the COFEPOSA, it can hardly be disputed that Section 5A specifically relates to the grounds in support of the detention order and it does not relate to the heads which are enumerated under Section 3. Besides, it is well-settled that an order of detention, even though issued under one head, when supported by more than one ground, it is equivalent to number of grounds and the order would be construed as consisting of as many orders as the grounds are. Section 5A is essentially in relation to the grounds in support of the detention. The question than arises, merely because Section 5A refers to the grounds in support of detention, can it be said that once the order passed under different heads is found to be defective in relation to one of the heads, irrespective of the grounds supporting other heads, it would render the entire order to be bad in law? In that connection, the second limb of the argument is that such an order would disclose non-application of mind by the detaining authority while arriving at the subjective satisfaction regarding the need for detaining the detenu by applying various heads under Section 3 of the COFEPOSA.

12. Whether the subjective satisfaction arrived at by

the detaining authority regarding the need for issuance of the detention order is vitiated or not cannot be a pure question of law. It will depend upon the facts of each case and would primarily depend upon the materials which are considered by the detaining authority while arriving at such subjective satisfaction. Being so, it would depend upon each case and will have to be ascertained by referring to the materials which were considered by the detaining authority and which are revealed from the grounds in support of the order and the explanation given by the detaining authority in the replies filed to the petition. Therefore, it is difficult to accept the general proposition as such that in case the order is issued on more than one head invariably in each and every such case, moment one of the heads of detention falls to the ground, the entire order would fall to the ground. There can be cases where it can be shown that the subjective satisfaction is arrived at in relation to the one head based on certain facts whereas the satisfaction in relation to another head is based on totally different facts or along with the facts which are also considered in relation to the first head. If the facts which lead to the satisfaction relating to each head can be segregated from each other in relation to each head, it would be difficult to accept the contention that the order of detention passed on more than one head, if found to be

defective in relation to one of the heads, then it would automatically fall to the ground in relation to all the heads. Therefore there cannot be any general proposition as such that moment the order passed under more than two heads if fails to satisfy in case of one head, when challenged before the Court, would automatically fail in its entirety, even when the other heads can be shown to have been justifiably arrived at on the basis of the materials placed before the detaining authority. It is to be noted that the learned Advocate for the petitioner has not pointed out a single judgment directly on the point either of the Apex Court or of any High Court in this regard. All the judgments which have been cited are in relation to different issues based on which inference is sought to be drawn that moment the order based on more than two heads is found to be unsustainable on one head, when challenged before the Court, then the entire order should be held to be defective and invalid. Such a proposition cannot be accepted.

13. In the unreported decision in the matter of Smt. **Padmavati Jayantilal Soni v. The Union of India and others** {Cri.W.P. No.200 of 1986} delivered by the Division Bench of this Court on 11-6-1986, which is relied upon by the petitioner, the order of detention was issued to prevent the detenu from smuggling goods,

abetting the smuggling of goods and engaging in transporting smuggled goods. The decision is on the point about the absence of material before the detaining authority to hold that the hashish which was seized was smuggled goods within the meaning of the said expression under the COFEPOSA read with the Customs Act. The decision is not on the issue regarding the point canvassed on behalf of the petitioner pertaining to the order under one of the heads being defective would affect the entire order.

14. In an unreported decision in the matter of **Babulal Dhanji Makwana v. The State of Maharashtra** {Criminal Writ Petition No.1051 of 2002} delivered on 8-4-2003 by the Division Bench of this Court, the order under challenge was issued under the COFEPOSA with a view to prevent the detenu from smuggling goods and acting in any manner prejudicial to the conservation of foreign exchange, in future. It was the contention on behalf of the detenu that considering the materials on record, the role of the detenu was at the most of a carrier of smuggled goods The argument was sought to be countered by contending that the term "smuggling of goods" has a wider meaning under the Customs Act, 1962 and would mean any act or omission which will render such goods liable to confiscation under Section 111 or Section 113 of the Customs Act and therefore includes all facets of smuggling of goods and the activities mentioned in

Clause (i) to (v) of sub-section (1) of Section 3 of the COFEPOSA. However, the said argument was rejected by the Division Bench relying upon an unreported decision of the Division Bench of this Court in **Hajiramal Veerchand Jain v. The State of Maharashtra & Ors.** {Criminal Writ Petition No.320 of 1984}. It was clearly held that "Keeping smuggled goods or dealing in smuggled goods did not constitute smuggling of goods or abetment thereof within the meaning of clause (i) and (ii) of sub-section (1) of Section 3 of the COFEPOSA Act and hence merely for keeping smuggled goods or dealing in smuggled goods, he cannot be detained for preventing him from abetting smuggling of goods." Obviously, the materials placed before the detaining authority were not sufficient to arrive at the subjective satisfaction regarding the involvement of the detenu in smuggling of goods or the abetment of smuggling of goods but merely those of a carrier of smuggled goods.

15. In **Sophia Gulam Mohd. Bham v. State of Maharashtra and others,** reported in 1999 (6) SCC 593, the order of detention was issued with a view to prevent the detenu from smuggling of goods, whereas the grounds of detention indicated that the activities which were carried out by the detenu were not carried individually by him but he was acting as a carrier for a group of persons who were the main financiers and organisers of

the smuggling activities. The nexus between the detenu and the said persons was sought to be established based on the documents recovered from the premises searched by the investigating agencies. Besides, the affidavit filed by the detaining authority in support of the detention order disclosed a statement contrary to the contents of the grounds in support of the detention order.

16. In the unreported decision in the matter of **Hajarimal Veerchand Jain v. The State of Maharashtra & others** {Criminal Writ Petition No.329 of 1984} delivered on 12-11-1984, which was relied upon by the Division Bench in Babulal Dhanji Makwana's case, the Division Bench referring to the facts of that case had observed that merely purchasing from seamen, may be unknown, the goods which were already smuggled goods, would neither amount to smuggling nor abetment thereof, and therefore, there can be no justification for concluding that the person purchasing such goods was smuggling such goods or was abetting smuggling of goods and therefore the detention of such person on the ground that it is necessary to prevent him from doing so in future, would not be justifiable.

17. In the unreported decision of the Division Bench of this Court in the matter of **Smt. Kamla Kantilal Jain v.**

**The Union of India and others** {Criminal Writ Petition No.1295 of 1989} delivered on 25-1-1990, while dealing with the issue as to whether there was material before the detaining authority to come to the conclusion that the detenu was likely to engage in abetting the smuggling of goods in future, observed that the order of detention disclosed that the detenu had been detained with a view to prevent him from abetting the smuggling of goods but there was no material at all before the detaining authority that the detenu in that case had been abetting the smuggling of goods.

18. In **Haroon Raidhan Sama v. State of Gujarat and others,** reported in 1986 (2) Crimes 155, the Division Bench of the Gujarat High Court held that where detention was on the ground of abetting the smuggling of charas but the detenu was only engaged in transporting and concealing charas, the detention order was bad for vice of non-application of mind to the said vital aspect by the detaining authority.

19. In **A. Sowkath Ali v. Union of India and others,** reported in 2000 (7) SCC 148, while referring to Section 5A of the COFEPOSA Act it was sought to be contended that the order of detention should not be deemed to be invalid or inoperative merely on the ground that some extraneous materials were placed before the detaining

authority since such extraneous materials have no bearing on the validity of the impugned order which can be sustained on the material set out in the grounds of detention itself, it was held that "What Section 5-A provides is that where there are two or more grounds covering various activities of the detenu, each activity is a separate ground by itself and if one of the grounds is vague, non-existent, not relevant, not connected or not proximately connected with such person or invalid for any other reason whatsoever, then that will not vitiate the order of detention." It was further held that Section 5-A applies where the detention is based on more than one ground, not where it is based on a single ground. Referring to the facts of the case under consideration before the Apex Court it was held that "it is a case of one composite ground. The different numbers of the ground of detention are only paragraphs narrating the facts with the details of the document which is being relied on but factually, the detention order is based on one ground, which is revealed by Ground (1)(xvi) of the grounds of detention which we have already quoted hereinbefore. Thus on the facts of this case Section 5-A has no application in the present case".

20. In **Dharamdas Shamlal Agarwal v. Police Commissioner and another,** reported in 1989 (2) SCC 370,

which is a decision in relation to the detention under the Gujarat Prevention of Anti-Social Activities Act, 1985 and where the detenu was sought to be detained with a view to prevent him from acting in any manner prejudicial to the maintenance of the public order and dealing with the contention regarding the non-placement of the material fact before the detaining authority before issuance of the order of detention, it was held that the same amounted to non-application of mind by the detaining authority which resulted in vitiating the subjective satisfaction of the detaining authority rendering the order of detention to be invalid.

21. It is thus seen that none of the above decisions sought to be relied upon are on the point which is sought to be canvassed. Being so, none of the said decisions support the proposition which is sought to be canvassed that if the order of detention is based on two or more different heads and if one of the heads of detention falls to the ground, the entire order should fall to the ground.

22. It is necessary to ascertain whether on the basis of the materials which are referred to in the grounds of detention, the order on two different heads, namely under Clause (i) and Clause (iii) can be independently supported or justified. The view that we are taking in

this regard is inevitable considering the provisions of law comprised under Section 3(1) of the COFEPOSA which empowers the authority to issue detention order either on one of the heads mentioned therein or on two or more of the heads enumerated thereunder. It is also settled law of principle, as rightly submitted by the learned A.P.P. that when the order of detention is supported by more than one ground, such an order is to be construed as comprising of as many orders as there are grounds in support of such order. In fact, the Apex Court in **Attorney General for India and others v. Amratlal Prajivandas and others,** reported in (1994) 5 SCC 54, the decision sought to be relied upon by the learned A.P.P., has clearly ruled that "Where the order of detention is based on more than one ground, the first part creates a legal fiction, viz., it must be deemed that there are as many orders of detention as there are grounds which means that each of such orders is an independent order." Same principle will apply in case of orders under each of the heads enumerated under Section 3 of the COFEPOSA. If each ground in support of the detention order tends to constitute separate order and consequently results in as many number of orders as there are grounds in support of detention, then the sequitur that follows is that when the detention is on more than one head, there would be as many orders as there are heads. For example, even though the detention is only on two heads with three

grounds, in support of each head, then there would be as many as three orders on each head. Therefore, assuming that three grounds in support of one head fail, consequently three orders in respect of such head would fail; nevertheless three remaining orders in relation to the other head would survive. In this regard, it is also necessary to take note of the relevant observations by the Apex Court in **Amratlal Prajivandas'** case (supra) which reads thus:-

> "Though ordinarily one act may not be held sufficient to sustain an order of detention, one act may sustain an order of detention if the act is of such a nature as to indicate that it is an organised act or a manifestation of organised activity. The gravity and nature of the act is also relevant. The test is whether the act is such that it gives rise to an inference that the person would continue to indulge in similar prejudicial activity. That is the reason why single acts of wagon-breaking, theft or signal material, theft of telegraph copper wires in huge quantity and removal of railway fish-plates were held

sufficient. Similarly, where the person tried to export huge amount of Indian currency to a foreign country in a planned and premeditated manner, it was held that such single act warrants an inference that he will repeat his activity in future and, therefore, his detention is necessary to prevent him from indulging in such prejudicial activity. If one looks at the acts the COFEPOSA is designed to prevent, they are all either acts of smuggling or of foreign exchange manipulation. These acts are indulged in by persons, who act in concert with other persons and quite often such activity has international ramifications. These acts are preceded by a good amount of planning and organisation. They are not like ordinary law and order crimes. If, however, in any given case a single act is found to be not sufficient to sustain the order of detention that may well be quashed but it cannot be stated as a principle that one single act cannot constitute the basis for detention. On the contrary, it does. In other words,

> it is not necessary that there should be multiplicity of grounds for making or sustaining an order of detention."

23. Once it is clearly held that an order of detention can even be sustained on a single ground, the contention that an order of detention issued on more than one head, merely because it becomes unsustainable in relation to one of such heads, the entire order would be rendered bad in law, cannot be accepted. If one of such heads is sustainable, there being one ground clearly disclosing in support to such head and sufficient for arriving at the subjective satisfaction regarding the need for issuance of the order of detention on such ground, merely because the other grounds become unsustainable, the entire order cannot be held to be bad in law. As observed above, of course, it would depend on the facts of each case revealed from the grounds of detention.

24. In the case in hand, undisputedly the impugned order of detention has been passed on two different heads, namely, under Section 3(1)(i) and 3(1)(iii) of the COFEPOSA. The challenge is essentially to the detention order issued under the head comprised under Section 3(1)(iii). It is sought to be contended that the order in relation to another head is bad only because once the order in relation to the head under

Section 3(1)(iii) fails, the entire order becomes unsustainable and not because the order under the head comprised under Section 3(1)(i) to be either not borne out from the materials on record or is not supported by the grounds of detention or otherwise illegal. Being so, once the contention that when the order issued on more than one head, and one of the heads of the detention falls to the ground, the entire order falls to the ground is rejected and there being no challenge to the detention on another head, the challenge in the petition to the detention order obviously fails. Nevertheless, considering the fact that it is a detention order which imposes restraint on the free movement of the detenu, it would be appropriate to consider whether the grounds in support of the detention makes out the case for subjective satisfaction of the detaining authority for issuance of the detention order under the head enumerated under Section 3(1)(i) of the COFEPOSA.

25. The grounds in support of the detention clearly refer to the fact that the detenu while he was about to leave for Singapore via Flight No.AI-480, scheduled to leave CSI Airport, Sahar, Mumbai at 01:50 hours on 20-8-2004, the detenu was found carrying USD and Euro currencies concealed in his hand-bag without declaring the same to the customs authorities. In fact, the

detenu was intercepted after he had cleared the A, B, C procedure and had proceeded towards the escalator leading to the security check area and on search, he was found carrying USD 81,000.00, Euro 7,600.00 and some Singapore dollars in his hand-bag. A detail examination of the baggage led to the seizure of the foreign currency of USD 81,000.00, Euro 7,600.00 and 366 Singapore dollars, totally equivalent to Indian currency of Rs.40,08,244.50 ps. The said foreign currency as was being smuggled out of the country, without declaring to the customs authorities, the same was seized under the reasonable belief that it was liable for confiscation under the Customs Act, 1962. The fact that the detenu was carrying such foreign currency, without any declaration, was also confirmed by the statement of the detenu recorded under Section 108 of the Customs Act, 1962. Based on the various facts narrated in the grounds which were revealed in the course of the investigation, the detaining authority had arrived at the finding that the detenu has indulged in smuggling activities and the same is clearly apparent from the attempt on the part of the detenu to carry the foreign currency along with him while attempting to board the aircraft which was to leave for Singapore. These materials, revealed from the grounds and reiterated in the affidavit in-reply filed by the detaining authority, clearly disclose that there were sufficient materials

before the detaining authority to arrive at the subjective satisfaction regarding the need for issuance of the detention order in relation to the head of "smuggling of goods" under Section 3(1)(i).

26. Any currency of any country other than India found in our country would be a foreign currency. Undoubtedly, there are certain regulations in relation to such currencies and how to deal with such currency and the procedure for holding such currency by the persons in India. Such a person carrying foreign currency while trying to leave the country, unless it is shown that he was lawfully entitled to hold the currency and to carry such currency out of India and, that too, without making any declaration to the customs authorities, it would apparently disclose that there was an attempt to smuggle such currency out of India. Being so, there were sufficient materials available before the detaining authority to arrive at the subjective satisfaction regarding the head enumerated under Clause (i) of Section 3(1) of the COFEPOSA independently of the grounds relating to transporting or keeping of the foreign currency under Section 3(1)(iii) which is stated to be not supported or established from the grounds of detention. Being so, the order in relation to the head comprised under Section 3(1)(i) of the COFEPOSA independently finds support from the materials on record

revealed from the grounds of detention and therefore merely because the order under the head comprised under Section 3(1)(iii) of the COFEPOSA is not sustainable, the entire order cannot be held to be bad in law or invalid.

27. For the reasons stated above, therefore, we do not find any justification for interference in the impugned order of detention and hence the petition fails and is hereby dismissed. The rule is discharged with no order as to costs.

(R.M.S. Khandeparkar, J.)

(P.V. Kakade, J.)